

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking Regarding
Emergency Disaster Relief Program.

R.18-03-011
(Filed March 22, 2018)

**JOINT CONSUMERS' APPLICATION FOR REHEARING OF DECISION 18-08-004
AFFIRMING THE PROVISIONS OF RESOLUTIONS M-4833 AND M-4835 AS
INTERIM DISASTER RELIEF EMERGENCY CUSTOMER PROTECTIONS**

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I. INTRODUCTION

Pursuant to Rule 16.1 of the Commission's Rules of Practice and Procedure, The Utility Reform Network, Center for Accessible Technology, and National Consumer Law Center ("Joint Consumers") respectfully submit this application for rehearing of Decision 18-08-004 ("Decision").¹

II. STANDARD FOR APPLICATION FOR REHEARING

Rule 16.1(c) requires an application for rehearing to set forth the grounds upon which the applicant considers a decision to be unlawful or erroneous, with specific references to the record or law. Here, Joint Consumers identify two errors in Decision 18-08-004: (1) the Decision fails to address record evidence showing that its adopted forms of disaster relief for LifeLine customers are unworkable without additional direction, and (2) the Decision erroneously allows unsupported disparate treatment of disaster victims by providing billing relief in the form of payment plans to electricity, gas, and water utility customers but not communications customers. Joint Consumers request that the Commission act expeditiously to correct the Decision by clarifying the process for providing relief from certain LifeLine rules regarding renewals and non-usage, and allocating funding from the state LifeLine fund to replace any loss of federal funding to providers due to compliance with federal rules pending a FCC waiver. The Decision should also be revised to explicitly ensure that eligible communications customers are offered robust payment plans.

¹ Rule 16.1 requires that an application for rehearing be filed within 30 days after the Commission mails a Decision. Decision 18-08-004 was issued on August 20, 2018. This application for rehearing is timely.

III. DISCUSSION

A. The Commission Erred When It Failed to Address Known Problems Utilizing the California LifeLine Fund To Supplement Any Forfeited Federal Funding As A Result of Implementing the Disaster Relief Customer Protections

Decision 18-08-004 erred by adopting certain disaster relief protections for LifeLine customers that were included in Resolutions M-4833 (for October 2017 disaster victims) and M-4835 (for December 2017 disaster victims) without addressing identified issues that made those provisions of the Resolutions unenforceable.² In Resolution M-4833, the Commission noted that it had filed a request with the FCC for a temporary waiver of certain federal LifeLine program rules (specifically rules regarding the federal renewal process and non-usage by customers) for disaster relief victims. The Commission further stated in the Resolution that it would identify specific instances in which it would allocate state funds to support ongoing program participation by customers who did not comply with the federal rules if the FCC denied the waiver.³ The Commission's waiver request remained pending with the FCC at the time the Commission adopted Resolution M-4835. This Resolution included the same provisions as M-4833.

After a substantial delay, the FCC ultimately granted a limited and temporary waiver for the renewal and non-usage rules, applicable only to specific census blocks⁴ and available only during a narrow window. The waiver did not serve the intended purpose and, instead, substantially limited the relief intended by the Commission in its

² Decision 18-08-004 at p. 9, COLs 7 and 8(g).

³ Resolution M-4833 at p. 15 (dated November 9, 2017). See also Resolution M-4835 at mimeo p. 12 (dated January 11, 2018).

⁴ The Resolutions and the subsequent decision do not use census blocks but apply to counties that have been the subject of an emergency declaration by the Governor.

Resolutions and associated waiver request.⁵ By carving out specific census blocks and limiting the relief for some victims to less than a week, the FCC's waiver was practically moot before it was even issued.⁶ It is Joint Consumers' understanding that upon receipt of the FCC's waiver, Staff did not seek to implement changes to the renewal and non-usage rules contained in the Resolutions and instead only put processes in place to facilitate customer renewals by allowing them to be processed by phone.⁷

When the Commission considered adopting the provisions of the Resolutions as interim disaster relief rules in this proceeding, Joint Consumers requested the Commission to waive standard renewal requirements and non-usage rules independent of an FCC waiver, and requested that California should cover associated costs to carriers through allocations from the state LifeLine fund to replace any lost federal support.⁸

The Decision acknowledges the Joint Consumers' comments but does not address or fix the problem of how to provide support for customers in the absence of a decision on an FCC waiver. Instead, it defers Joint Consumers' request for consideration of these issues in future workshops and fails to provide immediate guidance for how to assist customers who are affected by disasters in the absence of an FCC waiver or while an FCC waiver request is pending.⁹

⁵ *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, DA-18-123A1 at p. 1 (dated February 9, 2018).

⁶ *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, DA-18-123A1, Appendix A (dated February 9, 2018) (renewal and non-usage rules were waived for October 2017 disaster victims through February 15, 2018).

⁷ Joint Consumers Pre-Hearing Conference Statement at p. 8 (dated April 30, 2018).

⁸ Decision 18-08-004 at p. 14. *See also*, Joint Consumers Opening Comments on the Proposed Decision at p. 4 (dated July 30, 2018).

⁹ Decision 18-08-004 at p. 14.

The Decision appears to rely on the unsuccessful waiver processes adopted in the previous Resolutions to provide relief to LifeLine customers. Specifically, the Commission appears to require the staff to request a waiver from the FCC for each future emergency, and then wait to see if the FCC denies the waiver before providing relief from the state Fund. Without any basis to expect full or timely relief from the FCC, these requirements will not provide timely relief to affected customers.

In the OIR, the Commission explained that, “based on our experience with Resolutions M-4833 and M-4835, the Commission seeks to establish consumer protections that can be *implemented expeditiously* by utilities following a triggering event rather than needing to prepare and adopt a resolution after each event.”¹⁰ The Commission also proposed interim protection measures to ensure that “necessary post-disaster consumer protections are available as soon as possible.”¹¹ Any requirement for staff to repeatedly seek FCC waivers from specific federal Lifeline rules or to file subsequent resolutions to propose additional procedures, particularly after experiencing delay and limitations in consideration of identical waiver requests from previous disasters, will create unnecessary and harmful delay in a process that the Commission intends to be automatic and expedited.

The Decision does not permit the California LifeLine fund to replace any lost federal funds unless and until the FCC denies a requested waiver,¹² nor does it even

¹⁰ Order Instituting Rulemaking Regarding Emergency Disaster Relief Program, Rulemaking 18-03-011, at p. 5 (emphasis added) (issued April 2, 2018).

¹¹ *Id.* at p. 6.

¹² Decision 18-08-004 at p. 7; Resolution M-4833 at p. 16; Resolution M-4835 at mimeo p. 12.

authorize Staff to request a standing waiver of the renewal and non-usage rules for disaster victims. As demonstrated by the filings of the LifeLine providers, the confusion and delay surrounding the waiver process impedes the carriers' ability to implement the Decision as written, absent additional FCC or Commission action.¹³ Therefore, the Decision errs by failing to providing additional guidance so that the LifeLine disaster relief rules are workable.

Joint Consumers respectfully request the Commission expeditiously correct Decision 18-08-004 by providing the following as additional guidance:

- (1) Direct Staff to request a standing waiver from the FCC to toll renewal and non-usage rules for customers in a disaster zone for four months following any declaration of a state of an emergency by the Governor;
- (2) Clarify that the Decision's interim relief from the LifeLine renewal and non-usage rules for disaster victims is self-implementing and does not require an additional Resolution to further describe changes in LifeLine processes;¹⁴ and

¹³ American Broadband and Telecommunications Company, Advice Letter 13 at fn. 3 (dated August 24, 2018) ("Except for the filing of this Advice Letter, it does not appear that any LifeLine-related action is required from LifeLine providers at this juncture. . . . [Implementation of the relief was] contingent upon action by Federal Communications Commission or further action by the Commission"); Virgin Mobile USA, L.P., Advice Letter 26 (dated August 24, 2018) (same); Air Voice Wireless, LLC, Advice Letter 23 at p. 2 (dated August 31, 2018) ("Air Voice files this advice letter in good faith to demonstrate compliance with the Decision As is, the Decision would require Air Voice to violate federal Lifeline rules); Global Connections Inc. of America dba Stand Up Wireless, Advice Letter 20 at p. 1 (dated August 30, 2018) ("It is the Company's understanding, however, that requirement no. 7 (delay of California LifeLine annual renewal process and suspension of the de-enrollment of non-usage rules) is contingent upon either further action from the California Public Utilities Commission . . . and/or the granting of a waiver by the Federal Communications Commission . . . , neither of which has occurred"); iWireless, LLC, Advice Letter 21 at p. 1 (dated August 30, 2018) (same); TruConnect Communications, Inc., Advice Letter 25 at p. 1 (dated September 6 2018) (same).

¹⁴ The Decision states it adopts rules protecting LifeLine customers that are consistent with Resolutions M-4833 and M-4825. Decision 18-08-004 at p. 7. Resolutions M-4833 and M-4835 required Staff to submit a draft Resolution regarding the implementation of LifeLine customer protections if the FCC does not response timely. Resolution M-4833 at p. 16; Resolution M-4835 at mimeo p. 12. If such a requirement remained, it would cause unnecessary delay and, like the FCC waiver requirement, defeat the

(3) Authorize the use of funds from the California LifeLine fund to replace any federal Lifeline funds lost as a result of implementing the disaster relief rules pending a waiver of one or both of these two rules by the FCC or in the event the FCC denies the waiver.

B. The Decision Errs by Allowing for Disparate Treatment Between Energy and Telecommunications Providers as Part of Disaster Relief for Customers

The Decision errs by failing to properly support its finding that communications customers are not entitled to specific disaster relief in the form of payment plans, while acknowledging the importance of payment plans for customers of energy and water utilities as part of a larger package of relief to provide “continuity and support to customers during times of crisis.”¹⁵ Payment plans are an invaluable form of relief for disaster victims as customers face rebuilding or relocating their homes. Customers may also be out of work for a period of time even after their service is restored and damage to their homes is fixed. Therefore, having found that billing relief, including payment plans, are vital for victims of disasters, the Commission must correct this error by requiring communications companies to offer payment plans to their customers consistent with the relief provided to customers of energy and water utilities, as well as its intent for communications customers as stated in the Resolutions.

In the Resolutions, the Commission relied on the tariff provisions of the Carriers of Last Resort (COLRs) to provide billing relief such as credits and late payment protections for victims of disasters,

We remind Carrier [sic] of Last Resort (COLR) of their obligation under their filed tariffs to provide credits to customers for time out of service, as well as any additional service accommodations necessary to ensure their customers have

purpose of a standing set of relief provisions that are automatically triggered by a declaration of a state of emergency.

¹⁵ D.18-08-004 at p. 3. COL 6(e) (requiring payment plans) and 13(e-f) (requirement reasonable payment plan, and waiving bills for victims who lost their homes or small business).

access to telecommunications services following the fires including, but not limited to customer deposits, restoration and connection charges, line extension charges and temporary service allowances.¹⁶

Although the Resolutions did not specify which tariff provisions would apply, this language clearly signaled the Commission's intent that communications customers that are victims of disaster must have access to adequate billing relief when faced with a disaster that impacts service and causes hardship that, in turn, may cause the customer to lose service as a result of nonpayment.

The Interim Decision fails to carry out this intent to provide billing relief, including payment plans, for communications customers and to apply the relief requirements from the Resolutions more broadly beyond Carriers of Last Resort.¹⁷ The Interim Decision errs by not clarifying this issue and therefore leaving carriers and consumer advocates to rely on the overly narrow and vague language in the Resolutions that merely references COLR tariffs and presumes that these tariffs provide sufficient relief.¹⁸ Moreover, the Interim Decision fails even to acknowledge that not all wireline providers-- including most carriers offering 911, VoIP, and cable providers-- have tariffs¹⁹ thus failing to require all wireline communications companies to provide billing relief in the form of payment plans.

¹⁶ Resolution M-4833 at p. 10. *See also* Resolution M-4835 at mimeo p. 8 (using COLRs).

¹⁷ Decision 18-08-004, p. 7-8, compared to the relief ordered in the previous Resolutions, applies disaster relief requirements to a broad group of communications providers including, companies providing residential access to 911 emergency services, LifeLine providers, facilities based VoIP and COLRs.

¹⁸ Even if the Commission disagrees with Joint Consumers regarding the need to more broadly apply the payment plan requirements, at a minimum, Joint Consumers urge the Commission to clarify the vague wording in the Resolutions to help carriers and customers understand the specific provisions of COLR tariffs that will support victims of disasters.

¹⁹ Cox is one of the only – if not the only – cable provider that has a tariff in California. A payment plan is available through Cox at Cox' discretion. *See* Cox California Telcom, LLC dba Cox Communications, Schedule Cal. P.U.C. A-1, Fifth Revised Cal. P.U.C. Sheet No. 120-T (Advice Letter 201, filed August 6, 2004).

To further add to the confusion created by the Interim Decision by failing to clarify the wireline carrier obligations, the Commission incorporates a discussion about the expectations placed on wireless providers to offer payment plans. Specifically, the Decision states that “[t]he Commission urges wireless carriers to allow customers to defer or phase payments of coverage charges for data, talk, and text for defined periods of time,” and that “[t]he Commission urges wireless carriers to extend payment dates for service for defined periods of time for impacted customers.”²⁰

As written in both the Resolutions and the Interim Decision, the wireline and wireless provisions are vague and, for wireless providers, strictly voluntary. These provisions do not match the Commission’s intent to provide adequate relief to communications customers nor do they sufficiently protect communications customers compared to customers of other utilities. The Commission should provide greater specificity with regard to the obligations of both wireless and wireline providers to provide relief to disaster victims who are unable to make timely payments and need assistance to retain service and require both wireline and wireless providers to include as a term and condition of service²¹ a payment plan and other forms of deferred billing for disaster victims. The Commission should eliminate its disparate treatment for customers of communications companies as compared to customers of energy and water utilities and extend the payment plan provisions that it recognizes as critical protections for victims of disasters to all victims of disasters. Doing so will add certainty to the rules and provide customers with clear guidance as to the disaster relief available to them.

²⁰ Decision 18-08-004 at COL 9(e-f).

²¹ The Commission has found that it has jurisdiction to regulate the terms and conditions of service of intrastate wireless services. See, for example, D.13-05-035 (Carrier Certification). Payment plans do not impact entry or rates for wireless service, but merely change the amount of time a customer may have to pay his or her full bill.

Joint Consumers respectfully request that the Commission expeditiously correct Decision 18-08-004 to require all communications providers to offer payment plans to disaster victims.

IV. CONCLUSION

Joint Consumers urge the Commission to expeditiously adopt the above recommendations and ensure the Commission's interim disaster relief rules are workable and clear. Joint Consumers continue to support the Commission's effort to standardize consumer protections for future disaster situations and look forward to working with the Commission on refining and improving these disaster relief protections for future disasters.

Dated: September 19, 2018

Respectfully,

/s/

Ashley L. Salas
Authorized to Sign on Behalf of the Joint
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